

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 24, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP2182

Cir. Ct. No. 2012CV465

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

NATIONSTAR MORTGAGE, LLC,

PLAINTIFF-RESPONDENT,

v.

THOMAS G. HENK, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL GOULEE, Judge. *Affirmed.*

Before Kessler and Brennan, JJ., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Thomas G. Henk, Jr., *pro se*, appeals a judgment of foreclosure entered in favor of Nationstar Mortgage, LLC. He seeks a remand for trial on the merits of the complaint or, alternatively, dismissal with prejudice. We affirm.

¶2 In February 2007, Henk signed a note, secured by a mortgage on residential property, in which he agreed to repay Countrywide Bank, N.A., \$125,000 along with interest according to the terms of the note. Thereafter, the mortgage and the note both changed hands. In November 2011, Countrywide Bank, acting through a nominee, assigned the mortgage to Bank of America, N.A.¹ Additionally, Countrywide Bank endorsed the note to Countrywide Home Loans, Inc., which in turn endorsed the note in blank. By January 2012, the Federal National Mortgage Association owned the note and Bank of America was the servicer of the loan.

¶3 Henk fell behind on his mortgage payments. On January 13, 2012, Bank of America filed a foreclosure action against him on the ground that his payments were overdue for the period beginning in July 2011. Henk asserted affirmative defenses and counterclaims, and Bank of America moved for summary judgment. The parties thereafter made efforts to resolve the matter amicably but those efforts failed, and Bank of America renewed its summary judgment motion.

¶4 In May 2013, Bank of America moved to substitute Nationstar Mortgage, LLC, as plaintiff in the action because, effective on the first day of that month, Nationstar had assumed responsibility for servicing Henk's loan. The circuit court granted the requested relief.

¶5 After Nationstar entered the case, the parties litigated the pending motion for summary judgment. As relevant here, Nationstar submitted materials

¹ A nominee is an entity, such as an agent, that acts for another entity in a representative capacity. See *Schuh Trading Co. v. Commissioner*, 95 F.2d 404, 411 (7th Cir. 1938); see also BLACK'S LAW DICTIONARY 1211 (10th ed. 2014).

showing that it owned the mortgage pursuant to a May 2013 assignment from Bank of America, that Nationstar held the underlying mortgage note, and that Henk was in default on his mortgage payments. The circuit court awarded a summary judgment of foreclosure to Nationstar and dismissed Henk's counterclaims. He appeals.

¶6 An appeal from a grant of summary judgment presents an issue of law that we review *de novo* by applying the same standards employed by the circuit court. *Brownelli v. McCaughtry*, 182 Wis. 2d 367, 372, 514 N.W.2d 48 (Ct. App. 1994). “A party is entitled to summary judgment if ‘there is no genuine issue as to any material fact’ and that party ‘is entitled to a judgment as a matter of law.’” *Wachovia Mortg. FSB v. Dallas*, 2011 WI App 54, ¶5, 332 Wis. 2d 426, 797 N.W.2d 930 (citing WIS. STAT. § 802.08(2) (2011-12)).² Although our review is *de novo*, the normal rules of appellate procedure apply. Thus, issues not briefed or argued on appeal are deemed abandoned. See *Cosio v. Medical Coll. of Wis.*, 139 Wis. 2d 241, 242-43, 407 N.W.2d 302 (Ct. App. 1987). Similarly, we do not consider issues that are inadequately briefed, see *Kinnick v. Schierl, Inc.*, 197 Wis. 2d 855, 865-66, 541 N.W.2d 803 (Ct. App. 1995), or issues that the appellant raises for the first time in a reply brief. See *Techworks, LLC v. Wille*, 2009 WI App 101, ¶28, 318 Wis. 2d 488, 770 N.W.2d 727.

¶7 Henk offers a handful of assertions as to why, in his view, the circuit court wrongly granted summary judgment to Nationstar. He makes these

² The current version of WIS. STAT. § 802.08(2) is identical to the version cited in *Wachovia Mortg. FSB v. Dallas*, 2011 WI App 54, 332 Wis. 2d 426, 797 N.W.2d 930. All subsequent references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

assertions without reference to any governing legal authority beyond a single citation for the proposition that we review legal conclusions *de novo*.³ For this reason alone, he fails to demonstrate a basis for reversing the circuit court's order. *See Kinnick*, 197 Wis.2d at 866. We further conclude that his claims lack substantive merit.

¶8 We begin with Henk's contention that Nationstar is not entitled to summary judgment because its attorney did not file a proper notice of appearance when Nationstar entered the case as a successor plaintiff. The circuit court, however, signed and entered an order permitting substitution of plaintiff in this case, and the order identified Nationstar's counsel in that order. Nationstar thereafter appeared by that counsel and participated in the litigation. Henk fails to offer any authority requiring an additional "notice of appearance." *Cf. Brunton v. Nuvel Credit Corp.*, 2010 WI 50, ¶30, 325 Wis.2d 135, 785 N.W.2d 302 (explaining that a party may appear in a variety of ways, including both by filing a notice of appearance and by actively litigating in the proceeding). Accordingly, we reject this basis for reversing the summary judgment.

¶9 Henk complains next that Nationstar created only an "illusion of standing" when it entered the case because Nationstar did not first establish that the predecessor plaintiff, Bank of America, had standing to commence the action. Henk fails to show that Bank of America's standing is material. Pursuant to WIS. STAT. § 803.01(1):

³ We note for the sake of completeness that the appendix to Henk's appellate brief includes the text of WIS. STAT. § 802.03(1)-(2) (setting forth some rules governing pleading special matters) and the text of WIS. STAT. § 846.01 (foreclosure judgment).

[n]o action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ... *substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.*

(Emphasis added.) Accordingly, we need not and do not consider whether Bank of America was the proper party to commence the action.

¶10 Henk next contends that Nationstar, the servicer of his loan, lacks standing to pursue foreclosure because the Federal National Mortgage Association owns the mortgage note. Henk is wrong.

¶11 The mortgage note is endorsed in blank and therefore is payable to the bearer. *See PNC Bank, N.A. v. Bierbrauer*, 2013 WI App 11, ¶12, 346 Wis. 2d 1, 827 N.W.2d 124; *see also* WIS. STAT. § 403.205(2). The record conclusively shows that Nationstar is the bearer in possession of the note: a Nationstar employee filed an affidavit stating that Nationstar, directly and by its agents, possesses the note, and Nationstar brought the note to the courthouse for the summary judgment hearing. A party proves its right to enforce a mortgage note when the party possesses the original mortgage note that is endorsed in blank. *See Bierbrauer*, 346 Wis. 2d 1, ¶¶1, 10, 12; *see also OCWEN Loan Servicing, LLC. v. Segebrecht*, No. 2014AP764, unpublished slip op. ¶5 (WI App. Dec. 23, 2014). Because Nationstar holds the note, Nationstar may enforce the note: “[t]he ‘holder’ of an instrument has the right to enforce that instrument.” *See Bierbrauer*, 346 Wis. 2d 1, ¶10 (citation omitted).

¶12 One way to enforce a note is by foreclosing on the related mortgage. *See Glover v. Marine Bank of Beaver Dam*, 117 Wis. 2d 684, 693, 345 N.W.2d 449 (1984). As our supreme court recently clarified, when a note is transferred or

assigned, the equitable interests in the mortgage follow. *See Dow Family, LLC v. PHH Mortg. Corp.*, 2014 WI 56, ¶¶7, 47 354 Wis.2d 796, 848 N.W.2d 728. Thus, governing Wisconsin law accords Nationstar standing to pursue foreclosure here.

¶13 Nationstar also aptly directs our attention to persuasive federal authority, including *Sprint Commc'ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 283-86 (2008). There, the United States Supreme Court held that assignees for collection have standing to sue for recovery of proceeds that will be remitted to the assignor. *See id.* at 285-86. The holding is also instructive in the context of mortgage-backed securities: “[t]he servicer is the [principle’s] collection agent.... The servicer is much like an assignee for collection, who must render to the assignor the money collected by the assignee’s suit on his behalf (minus the assignee’s fee) but can sue in his own name.” *See CWCapital Asset Mgmt., LLC v. Chicago Props., LLC*, 610 F.3d 497, 500 (7th Cir. 2010). In light of the Wisconsin and federal law supporting Nationstar’s position, and in light of Henk’s failure to offer us any opposing authority, we are satisfied that Nationstar had standing to seek foreclosure in this case.

¶14 Henk asks us to consider ordering dismissal of the foreclosure action with prejudice if this court “finds fraud on the part of the original plaintiff.” Henk fails to develop any argument showing fraud on the part of any entity who appeared as a plaintiff in the circuit court action. Accordingly, we do not consider his vague allegation. *See Kinnick*, 197 Wis. 2d at 865-66.

¶15 Finally, Henk alleges in his reply brief that the circuit court improperly granted summary judgment because, before this action began, the “original lender” took steps that Henk describes as “fatal” to pursuit of the instant

litigation. We will not address this allegation. Henk offers no citation to legal authority in support of his claim that Countrywide Bank did anything that undermines Nationstar's right to summary judgment. *See id.* Moreover, we do not address issues raised in this court for the first time in a reply brief. *See Techworks, LLC*, 318 Wis. 2d 488, ¶28.

¶16 The record shows that Nationstar is entitled to a foreclosure judgment. Henk is in default on his mortgage payments, and Nationstar is the proper party to enforce his obligations. Henk presents nothing on appeal demonstrating that any material facts are in dispute. Accordingly, the circuit court correctly granted summary judgment.⁴ *See* WIS. STAT. § 802.08(2).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

⁴ The judgment granting foreclosure to Nationstar also dismissed Henk's counterclaims. Henk does not discuss the counterclaims with specificity or offer any argument to show that the circuit court improperly dismissed them. We deem any such argument abandoned. *See Cosio v. Medical Coll. of Wis.*, 139 Wis. 2d 241, 242-43, 407 N.W.2d 302 (Ct. App. 1987).

